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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
2003P07837WOUS

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Application Number	Filed
10/574,169	03/29/2006

First Named Inventor
Christian Scheering

Art Unit	Examiner
2456	Joe Chacko

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☐ attorney or agent of record. Registration number _____.
- ☑ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 55,179

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2010-04-12
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

I. RESPONSE TO THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103

A. Claims 9-15 And Claims 19-23 Are Not Rendered Obvious By The Cited Art

Claim 9 requires a method for verifying an availability of a server to include transmitting a message regarding an availability of the server by a first client to a plurality of predefinable other clients and preventing the transmission of any availability request by the predefinable other clients to the server for at least a prescribable period of time. Claims 10-15 and 19-23 depend directly or indirectly from claim 9 and, therefore, also contain these limitations.

The Examiner correctly reads Jung as not including any teaching or suggestion of transmitting a message regarding an availability of the server by a client to other clients nor the prevention of a transmission of an availability request to the server by other clients for a predefinable period of time. However, the Examiner has construed Shrivastava et al. as teaching or suggesting such requirements.

1. Shrivastava et al. Do Not Teach Or Suggest Prevention of Availability Request Transmissions By Predefinable Other Clients

Shrivastava et al. disclose a system for communicating modification information to servers in a server cluster. (Abstract). The Examiner has asserted that Column 5, lines 25-37 suggest that availability request transmission be prevented. To the contrary, this portion of Shrivastava et al. makes it clear that no availability requests transmissions of predefinable other clients are prevented.

Shrivastava et al. teach that during a regroup event, systems within a cluster 58 are checked to determine if a system can communicate with the other members of the cluster 58. (Col. 5, lines 34-36). Such communication verification is performed by the communications manager 76, which is configured to send "periodic messages, called heartbeats, to counterpart

components on the other systems of the cluster 58 to provide a mechanism for detecting that the communications path is good and that the other systems are operational." (Col. 5, lines 18-21).

In the event a failure is detected, a message is broadcast to a cluster to cause "other members to verify their view of the current cluster membership." (Col. 5, lines 29-32). Shrivastava et al. refer to this as a "regroup event" and requires membership to be stabilized before writing to shared devices occurs.

Shrivastava et al. clearly do teach or suggest that availability requests be sent between cluster members, or servers, even during a regrouping event that creates a stoppage of writes to potentially shared devices. Indeed, Shrivastava et al. teach that the monitoring of the communication paths via such availability requests are central to the ability of the servers in the cluster 58 to ensure communications paths are good and the other systems are operational. (Col. 5, lines 29-32).

As should be appreciated from the above, Shrivastava et al. clearly do not teach or suggest any prevention of sending availability requests to other predefinable clients. To the contrary, Shrivastava et al. teach all servers within a cluster must verify their cluster membership via periodic messages to ensure operational communication paths are maintained. (Col. 5, lines 10-37).

2. Shrivastava et al. Teach Away From Preventing Transmission Of Availability Requests By Predefinable Other Clients

Shrivastava et al. teach that the monitoring of the communication paths via periodic messages exchanged between servers within a cluster is necessary to ensure communication paths are good and the other systems are operational. Shrivastava et al. also teach that such messaging must be exchanged during regroup events to ensure failed systems are failed over or handed off to one or more active systems. Such teaching is opposite the limitations of claims 9-

15 and 19-23, which require that transmission of availability requests to a server by other clients be prevented to reduce the load on a server. Shrivastava et al. clearly teach away from such a requirement.

The Examiner has asserted that at Col. 5, lines 25-37 Shrivastava et al. disclose a group of systems 60 within a cluster 58 that cease writing to shared devices during a regroup event and that this is a prevention of messages being sent to a server identified as no longer being available at page 3 of the Office Action of March 1, 2010. To the contrary, such systems 60 are not clients of a server nor is any system 60 a client that has identified that a server has failed and has prevented other clients from sending messages to that server. The lone non-communication taught in this disclosed regroup event is to a shared device. Even if such a device were a server, that device never failed. In fact, messages between the systems 60 of the cluster are being sent to the failed system 60 during the regroup event to verify that the failed system did in fact fail. (Col. 5, lines 25-37).

3. Granted European Patent No. EP 1 668 866 Is An Indicia Of Nonobviousness

EP 1 668 866 is a European patent that is related to the present application. The European Patent Office reviewed the prior art and found that the application submitted by applicant warranted patent protection and granted a patent to the assignee of the present application that contained claims having a similar scope to the claims presented herein. A copy of this patent was provided to the Examiner with the Amendment dated July 8, 2009.

For at least the above discussed reasons, pending claims 9-15 and 19-23 are not rendered obvious by the cited art. Reconsideration and allowance of these claims is respectfully requested.

C. Claims 16, 18 And 24-29 Are Not Rendered Obvious By The Cited Art

Claim 16 requires a control program loaded into a RAM of a client to have code that causes the client to transmit a message regarding an availability of the server to a plurality of other clients. This message is configured to prevent transmission of availability requests by predefinable other clients to the server for a predefinable period of time.

Claim 18 requires a client to include a device configured to transmit a message regarding an availability of the server to a plurality of predefinable other clients. This message is configured to prevent a transmission of an availability request by any of the predefinable other clients to the server for a predefinable period of time if the confirmation message responding to the availability request is received by the client.

As discussed above with reference to claim 9, the cited art fails to teach or suggest a client having a device or program that is configured to prevent transmission of availability requests by other clients to the server for a time period. Indeed, the cited combination of art teaches away from such a client.

D. Claim 22 Is Allowable

The Examiner contends that a router CPE disclosed by Jung is a client configured to monitor for receipt of a message from another client regarding the availability of a server. (Office Action, at 6). To the contrary, Jung does not disclose any waiting time period or other predefined time period before a client transmits a collective availability request to a server if no multicast collective request has been received within that predefined time period. Indeed, paragraph 67 of Jung, which the Examiner relies on to reject claim 22 explicitly states that a home agent HT should send a message to a mobile node if it does not receive a message within

the life of an authentication lifetime. Such messaging teaches away from claim 22 since no multicast message is sent to a server after failure to receive a message within a time period.

E. Claim 24 Is Allowable

The Examiner relies on paragraph 67 of Jung to reject claim 24. (Office Action, at 6). The Examiner contends a CPE router that monitors for messages is a fourth device of a client. To the contrary, a router is not a device of a client. The router is a separate device that is not included within a client, which the Examiner has construed as a mobile node (MN) (Office Action, at 4). The CPE router is not a device of the mobile node MN. (Jung, Figure 20).

F. Claim 29 Is Allowable

The Examiner relies upon paragraph 67 of Jung and the CPE router disclosed by Jung as some how rendering claim 29 obvious. As discussed above with reference to claim 24, Jung does not disclose a fourth device of a client.

Further, Jung does not disclose a device of a client that is configured to prevent transmission of an availability request to a server at least for a prescribable time interval upon receipt of a message from another client about server availability. For example, if a server is determined to be available, the MN 10 conducts a location registration for VPN service. (Jung, paragraphs 68-69).